



## RECOMMENDATIONS ON ASSET FORFEITURE LAWS

The State Public Defender appreciates the Legislature’s inclusion of the State Defender on the Asset Forfeiture Task Force (HB 1410, 2016 Regular Session). We would like to take this opportunity to make recommendations to the Task Force on reform of our laws governing asset forfeiture.

The Task Force heard testimony from the Heritage Foundation raising concerns about financial incentives corrupting the system; lack of transparency and lack of judicial oversight. We heard from Rick Ward about abuses in the area of Second Amendment rights. We heard concerns from Senator Tindell about the use of private attorneys to bring forfeiture actions and testimony from DA Guest regarding his belief that only public prosecutors should bring these actions.

Our takeaway from reviewing statutes and case law and all testimony received is that: forfeiture of property tainted by criminal activity is good public policy and serves legitimate public safety interests if targeted at organized criminal activity and not low level offenses; there must be improved transparency; and enhanced judicial oversight of all forfeitures. Thus we support the proposals put forth by Chairman Baker.<sup>1</sup>

We do not believe these proposals go far enough. Regardless of whether or not there is sufficient evidence of abuse in the current system, there is no public policy justification for maintaining the “eat what you kill” scheme. The justification of forfeiture is to remove the financial incentives and cripple major criminal operations. Administrative forfeiture does not address these concerns and results in less due process for offenders and innocent owners in low level crimes that should not be subject to forfeiture at all. Miss. Code §41-29-176 should be repealed and a \$20,000 threshold included in other forfeiture statutes.

The forfeited funds are public funds. They are forfeited because they are tainted by a violation of the laws of the State of Mississippi and therefore should forfeit to the State not a political

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<sup>1</sup> Without seeing Chairman Baker’s proposed legislation on transparency or specifics from the ACLU, I suggest the “Seizure and Forfeiture Reporting Act” model legislation provided by the Institute for Justice as the basis for the transparency reforms.

subdivision or particular agency. A “Criminal Justice Enhancement Fund” administered by the Department of Public Safety should be established to receive appropriations from the Legislature of proceeds from all forfeitures.

A committee consisting of the director of MBN, Sheriff’s Association; Police Chief’s Association; Prosecutor’s Association; Attorney General; Supervisor’s Association and the State Public Defender should review and approve grants under the program. No less than eighty percent (80%) of grants should go to local and/or state law enforcement agencies. No more than twenty percent (20%) should be divided evenly between prosecution and defense services.

Police officers should have bulletproof vests because they need them not because they have seized enough merchantable weapons to purchase them. Victims of human trafficking should receive government services and the AG should be able to operate the coordination of services program because of need not because enough funds were forfeited.

Specific changes to existing laws follow:

TITLE 41. PUBLIC HEALTH  
CHAPTER 29. POISONS, DRUGS AND OTHER CONTROLLED SUBSTANCES  
ARTICLE 3. UNIFORM CONTROLLED SUBSTANCES LAW

Miss. Code Ann. § 41-29-153 (2016)

§ 41-29-153. Forfeitures

(a) The following are subject to forfeiture:

(1) All controlled substances which have been manufactured, distributed, dispensed or acquired in violation of this article or in violation of Article 5 of this chapter;

(2) All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this article or in violation of Article 5 of this chapter;

(3) All property which is used, or intended for use, as a container for property described in paragraph (1) or (2) of this subsection;

(4) All conveyances, including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession or concealment of property described in paragraph (1) or (2) of this subsection, however:

A. No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this article;

B. No conveyance is subject to forfeiture under this section by reason of any act or omission

proved by the owner thereof to have been committed or omitted without his knowledge or consent; if the confiscating authority has reason to believe that the conveyance is a leased or rented conveyance, then the confiscating authority shall notify the owner of the conveyance within five (5) days of the confiscation;

C. A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to the act or omission;

D. A conveyance is not subject to forfeiture for a violation of Section 41-29-139(c)(2)(A), (B) or (C);

(5) All money, in excess of \$20,000 ~~deadly weapons~~, books, records, and research products and materials, including formulas, microfilm, tapes and data which are used, or intended for use, in violation of this article or in violation of Article 5 of this chapter;

(6) All drug paraphernalia as defined in Section 41-29-105(v); and

(7) Everything of value, in excess of \$20,000, including real estate, furnished, or intended to be furnished, in exchange for a controlled substance in violation of this article, all proceeds traceable to such an exchange, and all monies, negotiable instruments, businesses or business investments, securities, and other things of value used, or intended to be used, to facilitate any violation of this article. All monies, coin and currency found in close proximity to forfeitable controlled substances, to forfeitable drug manufacturing or distributing paraphernalia, or to forfeitable records of the importation, manufacture or distribution of controlled substances are presumed to be forfeitable under this paragraph; the burden of proof is upon claimants of the property to rebut this presumption.

A. No property shall be forfeited under the provisions of subsection (a)(7) of this section, to the extent of the interest of an owner, by reason of any act or omission established by him to have been committed or omitted without his knowledge or consent.

B. Neither personal property encumbered by a bona fide security interest nor real estate encumbered by a bona fide mortgage, deed of trust, lien or encumbrance shall be forfeited under the provisions of subsection (a)(7) of this section, to the extent of the interest of the secured party or the interest of the mortgagee, holder of a deed of trust, lien or encumbrance by reason of any act or omission established by him to have been committed or omitted without his knowledge or consent.

(b) Property subject to forfeiture may be seized by any sworn law enforcement officer acting within the course and scope of his duty as a law enforcement officer ~~the bureau, local law enforcement officers, enforcement officers of the Mississippi Department of Transportation, highway patrolmen, the board, or the State Board of Pharmacy~~ upon process issued by any appropriate court having jurisdiction over the property. Seizure without process may be made if:

(1) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this article;

(3) Any sworn law enforcement officer acting within the course and scope of his duty as a law enforcement officer has ~~The bureau, the board, local law enforcement officers, enforcement officers of the Mississippi Department of Transportation, or highway patrolmen, or the State Board of Pharmacy~~ have probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) Any sworn law enforcement officer acting within the course and scope of his duty as a law enforcement officer has ~~The bureau, local law enforcement officers, enforcement officers of the Mississippi Department of Transportation, highway patrolmen, the board, or the State Board of Pharmacy~~ have probable cause to believe that the property was used or is intended to be used in violation of this article.

(5) Any property seized without a judicially issued seizure warrant must be immediately returned to the person from whom it was seized unless a seizure warrant is obtained from a County or Circuit Court Judge within 72 hours of the seizure. The judge shall issue the seizure warrant upon showing of probable cause that a violation of the Uniformed Controlled Substances Act has either been committed or was actively being committed at the time of the seizure, and that the seized property is either the proceeds of that offense, or in the case of property used to facilitate the offense, that such property is substantially connected to that offense.

A substantial connection is a connection that is more than incidental or fortuitous. A substantial connection may be shown by establishing that the use of the property made the crime less difficult.

(c) Controlled substances listed in Schedule I of Section 41-29-113 that are possessed, transferred, sold, or offered for sale in violation of this article are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in the said Schedule I, which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state.

(d) Species of plants from which controlled substances in Schedules I and II of Sections 41-29-113 and 41-29-115 may be derived which have been planted or cultivated in violation of this article, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the state.

(e) The failure, upon demand by any sworn law enforcement officer acting within the course and scope of his duty as a law enforcement officer ~~the bureau and/or local law enforcement officers, or their authorized agents, or highway patrolmen designated by the bureau, the board, or the State Board of Pharmacy,~~ of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, constitutes authority for the seizure and forfeiture of the

plants.

TITLE 41. PUBLIC HEALTH  
CHAPTER 29. POISONS, DRUGS AND OTHER CONTROLLED SUBSTANCES  
ARTICLE 3. UNIFORM CONTROLLED SUBSTANCES LAW

Miss. Code Ann. § 41-29-176 (2016)

~~§ 41-29-176. Forfeiture of property other than controlled substance, raw material or paraphernalia [Repealed effective July 1, 2018]~~

~~—[Until July 1, 2018, this section shall read as follows:]~~

~~(1) When any property other than a controlled substance, raw material or paraphernalia, the value of which does not exceed Twenty Thousand Dollars (\$ 20,000.00), is seized under the Uniform Controlled Substances Law, the property may be forfeited by the administrative forfeiture procedures provided for in this section.~~

~~(2) The attorney for or any representative of the seizing law enforcement agency shall provide notice of intention to forfeit the seized property administratively, either by certified mail, return receipt requested, or by personal delivery, to all persons who are required to be notified pursuant to Section 41-29-177(2).~~

~~(3) If notice of intention to forfeit the seized property administratively cannot be given as provided in subsection (2) of this section because of refusal, failure to claim, insufficient address or any other reason, the attorney for or representative of the seizing law enforcement agency shall provide notice by publication in a newspaper of general circulation in the county in which the seizure occurred for once a week for three (3) consecutive weeks. However, if the value of the property seized does not exceed Ten Thousand Dollars (\$ 10,000.00), substitute notice under this subsection (3) of intention to administratively forfeit the property may be made by posting a notice on an official state government forfeiture site for at least thirty (30) consecutive days. The site shall be created and maintained by the Mississippi Bureau of Narcotics. Should other seizing law enforcement agencies choose to utilize the site for Internet publication, the bureau may charge a reasonable fee for such usage.~~

~~(4) Notice pursuant to subsections (2) and (3) of this section shall include the following information:~~

~~—(a) A description of the property;~~

~~—(b) The approximate value of the property;~~

~~—(c) The date and place of the seizure;~~

~~—(d) The connection between the property and the violation of the Uniform Controlled~~

Substances Law;

—(e) The instructions for filing a request for judicial review; and

—(f) A statement that the property will be forfeited to the seizing law enforcement agency if a request for judicial review is not timely filed.

(5) Any person claiming an interest in property which is the subject of a notice under this section may, within thirty (30) days after receipt of the notice or of the date of the first publication of the notice, file a petition to contest forfeiture signed by the claimant in the county court, if a county court exists, or otherwise in the circuit court of the county in which the seizure is made or the county in which the criminal prosecution is brought, in order to claim an interest in the property. Upon the filing of the petition and the payment of the filing fees, service of the petition shall be made on the attorney for or representative of the seizing law enforcement agency, and the proceedings shall thereafter be governed by the rules of civil procedure.

(6) If no petition to contest forfeiture is timely filed, the attorney for the seizing law enforcement agency shall prepare a written declaration of forfeiture of the subject property and the forfeited property shall be used, distributed or disposed of in accordance with the provisions of Section 41-29-181.

*[From and after July 1, 2018, this section shall read as follows:]*

(1) When any property other than a controlled substance, raw material or paraphernalia, the value of which does not exceed Twenty Thousand Dollars (\$ 20,000.00), is seized under the Uniform Controlled Substances Law, the property may be forfeited by the administrative forfeiture procedures provided for in this section.

(2) The attorney for or any representative of the seizing law enforcement agency shall provide notice of intention to forfeit the seized property administratively, either by certified mail, return receipt requested, or by personal delivery, to all persons who are required to be notified pursuant to Section 41-29-177(2).

(3) If notice of intention to forfeit the seized property administratively cannot be given as provided in subsection (2) of this section because of refusal, failure to claim, insufficient address or any other reason, the attorney for or representative of the seizing law enforcement agency shall provide notice by publication in a newspaper of general circulation in the county in which the seizure occurred for once a week for three (3) consecutive weeks.

(4) Notice pursuant to subsections (2) and (3) of this section shall include the following information:

—(a) A description of the property;

—(b) The approximate value of the property;

~~—(c) The date and place of the seizure;~~

~~—(d) The connection between the property and the violation of the Uniform Controlled Substances Law;~~

~~—(e) The instructions for filing a request for judicial review; and~~

~~—(f) A statement that the property will be forfeited to the seizing law enforcement agency if a request for judicial review is not timely filed.~~

~~(5) Any person claiming an interest in property which is the subject of a notice under this section may, within thirty (30) days after receipt of the notice or of the date of the first publication of the notice, file a petition to contest forfeiture signed by the claimant in the county court, if a county court exists, or otherwise in the circuit court of the county in which the seizure is made or the county in which the criminal prosecution is brought, in order to claim an interest in the property. Upon the filing of the petition and the payment of the filing fees, service of the petition shall be made on the attorney for or representative of the seizing law enforcement agency, and the proceedings shall thereafter be governed by the rules of civil procedure.~~

~~(6) If no petition to contest forfeiture is timely filed, the attorney for the seizing law enforcement agency shall prepare a written declaration of forfeiture of the subject property and the forfeited property shall be used, distributed or disposed of in accordance with the provisions of Section 41-29-181.~~

TITLE 41. PUBLIC HEALTH  
CHAPTER 29. POISONS, DRUGS AND OTHER CONTROLLED SUBSTANCES  
ARTICLE 3. UNIFORM CONTROLLED SUBSTANCES LAW

Miss. Code Ann. § 41-29-177 (2016)

§ 41-29-177. Procedure for disposition of seized property; petition of forfeiture; inquiry into ownership; failure to discover owner

(1) ~~Except as otherwise provided in Section 41-29-176, Mississippi Code of 1972,~~ when any property, other than a controlled substance, raw material or paraphernalia, is seized under the Uniform Controlled Substances Law, proceedings under this section shall be instituted within thirty (30) days from the date of seizure or the subject property shall be immediately returned to the party from whom seized.

(2) A petition for forfeiture shall be filed by the District Attorney or Attorney General in the name of the State of Mississippi, ~~the county or the municipality and may be filed~~ in the county in which the seizure is made, the county in which the criminal prosecution is brought or the county in which the owner of the seized property is found. Forfeiture proceedings may be brought in the circuit court or the county court if a county court exists in the county and the value of the seized property is within the jurisdictional limits of the county court as set forth in Section 9-9-21,

Mississippi Code of 1972. A copy of such petition shall be served upon the following persons by service of process in the same manner as in civil cases:

- (a) The owner of the property, if address is known;
  - (b) Any secured party who has registered his lien or filed a financing statement as provided by law, if the identity of such secured party can be ascertained by the ~~Bureau of Narcotics or the local law enforcement~~ seizing agency by making a good faith effort to ascertain the identity of such secured party as described in subsections (3), (4), (5), (6) and (7) of this section;
  - (c) Any other bona fide lienholder or secured party or other person holding an interest in the property in the nature of a security interest of whom the ~~seizing Mississippi Bureau of Narcotics or the local law enforcement~~ seizing agency has actual knowledge;
  - (d) Any holder of a mortgage, deed of trust, lien or encumbrance of record, if the property is real estate, by making a good faith inquiry as described in subsection (8) of this section; and
  - (e) Any person in possession of property subject to forfeiture at the time that it was seized.
- (3) If the property is a motor vehicle susceptible of titling under the Mississippi Motor Vehicle Title Law and if there is any reasonable cause to believe that the vehicle has been titled, the ~~seizing Bureau of Narcotics or the local law enforcement~~ seizing agency shall make inquiry of the State Tax Commission as to what the records of the State Tax Commission show as to who is the record owner of the vehicle and who, if anyone, holds any lien or security interest which affects the vehicle.
- (4) If the property is a motor vehicle and is not titled in the State of Mississippi, then the ~~seizing Bureau of Narcotics or the local law enforcement~~ seizing agency shall attempt to ascertain the name and address of the person in whose name the vehicle is licensed, and if the vehicle is licensed in a state which has in effect a certificate of title law, the bureau or the local law enforcement agency shall make inquiry of the appropriate agency of that state as to what the records of the agency show as to who is the record owner of the vehicle and who, if anyone, holds any lien, security interest or other instrument in the nature of a security device which affects the vehicle.
- (5) If the property is of a nature that a financing statement is required by the laws of this state to be filed to perfect a security interest affecting the property and if there is any reasonable cause to believe that a financing statement covering the security interest has been filed under the laws of this state, the ~~seizing Bureau of Narcotics or the local law enforcement~~ seizing agency shall make inquiry of the appropriate office designated in Section 75-9-501, Mississippi Code of 1972, as to what the records show as to who is the record owner of the property and who, if anyone, has filed a financing statement affecting the property.
- (6) If the property is an aircraft or part thereof and if there is any reasonable cause to believe that an instrument in the nature of a security device affects the property, then the ~~seizing Bureau of Narcotics or the local law enforcement~~ seizing agency shall make inquiry of the Mississippi Department of Transportation as to what the records of the Federal Aviation Administration show as to who

is the record owner of the property and who, if anyone, holds an instrument in the nature of a security device which affects the property.

(7) In the case of all other personal property subject to forfeiture, if there is any reasonable cause to believe that an instrument in the nature of a security device affects the property, then the seizing Bureau of Narcotics or the local law enforcement agency shall make a good faith inquiry to identify the holder of any such instrument.

(8) If the property is real estate, the seizing Bureau of Narcotics or the local law enforcement agency shall make inquiry of the chancery clerk of the county wherein the property is located to determine who is the owner of record and who, if anyone, is a holder of a bona fide mortgage, deed of trust, lien or encumbrance.

(9) In the event the answer to an inquiry states that the record owner of the property is any person other than the person who was in possession of it when it was seized, or states that any person holds any lien, encumbrance, security interest, other interest in the nature of a security interest, mortgage or deed of trust which affects the property, the seizing Bureau of Narcotics or the local law enforcement agency shall cause any record owner and also any lienholder, secured party, other person who holds an interest in the property in the nature of a security interest, or holder of an encumbrance, mortgage or deed of trust which affects the property to be named in the petition of forfeiture and to be served with process in the same manner as in civil cases.

(10) If the owner of the property cannot be found and served with a copy of the petition of forfeiture, or if no person was in possession of the property subject to forfeiture at the time that it was seized and the owner of the property is unknown, the seizing Bureau of Narcotics or the local law enforcement agency shall file with the clerk of the court in which the proceeding is pending an affidavit to such effect, whereupon the clerk of the court shall publish notice of the hearing addressed to "the Unknown Owner of \_\_\_\_\_," filling in the blank space with a reasonably detailed description of the property subject to forfeiture. Service by publication shall contain the other requisites prescribed in Section 11-33-41, and shall be served as provided in Section 11-33-37, Mississippi Code of 1972, for publication of notice for attachments at law.

(11) No proceedings instituted pursuant to the provisions of this article shall proceed to hearing unless the judge conducting the hearing is satisfied that this section has been complied with. Any answer received from an inquiry required by subsections (3) through (8) of this section shall be introduced into evidence at the hearing.

TITLE 41. PUBLIC HEALTH  
CHAPTER 29. POISONS, DRUGS AND OTHER CONTROLLED SUBSTANCES  
ARTICLE 3. UNIFORM CONTROLLED SUBSTANCES LAW

Miss. Code Ann. § 41-29-179 (2016)

§ 41-29-179. Procedure for disposition of seized property; answer; hearing; burden of proving property subject to forfeiture; disposition after court's finding; summary forfeiture of controlled substances, raw material and paraphernalia

(1) ~~Except as otherwise provided in Section 41-29-176,~~ an owner of property, other than a controlled substance, raw material or paraphernalia, that has been seized shall file an answer within thirty (30) days after the completion of service of process. If an answer is not filed, the court shall hear evidence that the property is subject to forfeiture and forfeit the property to the State of Mississippi Bureau of Narcotics or the local law enforcement agency. If an answer is filed, a time for hearing on forfeiture shall be set within thirty (30) days of filing the answer or at the succeeding term of court if court would not be in progress within thirty (30) days after filing the answer. Provided, however, that upon request ~~of a party by the Bureau of Narcotics, the local law enforcement agency or the owner of the property,~~ the court may postpone said forfeiture hearing to a date past the time any criminal action is pending against said owner.

(2) If the owner of the property has filed an answer denying that the property is subject to forfeiture, then the burden is on the State petitioner to prove that the property is subject to forfeiture. However, if an answer has not been filed by the owner of the property, the petition for forfeiture may be introduced into evidence and is prima facie evidence that the property is subject to forfeiture. The standard of proof placed upon the State petitioner in regard to property forfeited under the provisions of this article shall be by a preponderance of the evidence.

(3) At the hearing any claimant of any right, title or interest in the property may prove his lien, encumbrance, security interest, other interest in the nature of a security interest, mortgage or deed of trust to be bona fide and created without knowledge or consent that the property was to be used so as to cause the property to be subject to forfeiture.

(4) In a case where the State meets its burden of proof, and a Claimant owning less than one hundred percent of the current value of property meets its burden of proof, the State may elect to turn the property over to the prevailing Claimant in its entirety, or the State may liquidate the property and pay the Claimant the full value of the Claimant's interest in the asset, retaining the balance. ~~If it is found that the property is subject to forfeiture, then the judge shall forfeit the property to the Mississippi Bureau of Narcotics or the local law enforcement agency. However, if proof at the hearing discloses that the interest of any bona fide lienholder, secured party, other person holding an interest in the property in the nature of a security interest, or any holder of a bona fide encumbrance, mortgage or deed of trust is greater than or equal to the present value of the property, the court shall order the property released to him. If such interest is less than the present value of the property and if the proof shows that the property is subject to forfeiture, the court shall order the property forfeited to the Mississippi Bureau of Narcotics or the local law enforcement agency.~~

(5) Upon a petition filed in the name of the State of Mississippi, ~~the county or the municipality~~ with the clerk of the circuit court of the county in which the seizure of any controlled substance or raw material is made, the circuit court having jurisdiction may order the controlled substance or raw material summarily forfeited except when lawful possession and title can be ascertained. If a person is found to have had lawful possession and title prior to seizure, the court shall order the controlled substance or raw material returned to the owner, if the owner so desires. Upon a petition filed in the name of the State of Mississippi, ~~the county or the municipality~~ with the

clerk of the circuit court of the county in which the seizure of any purported paraphernalia is made, the circuit court having jurisdiction may order such seized property summarily forfeited when the court has determined the seized property to be paraphernalia as defined in Section 41-29-105(v).

TITLE 41. PUBLIC HEALTH  
CHAPTER 29. POISONS, DRUGS AND OTHER CONTROLLED SUBSTANCES  
ARTICLE 3. UNIFORM CONTROLLED SUBSTANCES LAW

Miss. Code Ann. § 41-29-181 (2016)

§ 41-29-181. Procedure for disposition of seized property; order directing disposition by bureau of narcotics

(1) Regarding all controlled substances, raw materials and paraphernalia which have been forfeited, the circuit court shall by its order direct the Bureau of Narcotics to:

(a) Retain the property for its official purposes;

(b) Deliver the property to a government agency or department for official purposes;

(c) Deliver the property to a person authorized by the court to receive it; or

(d) Destroy the property that is not otherwise disposed, pursuant to the provisions of Section 41-29-154.

(2) All other property, real or personal, which is forfeited under this article, except as otherwise provided in Section 41-29-185, and except as provided in subsections (3), (7) and (8) of this section, shall be liquidated and, after deduction of court costs and the expenses of liquidation, the proceeds shall be ~~divided and deposited as follows:~~ to the General Fund of the State of Mississippi.

~~—(a) In the event only one (1) law enforcement agency participates in the underlying criminal case out of which the forfeiture arises, twenty percent (20%) of the proceeds shall be forwarded to the State Treasurer and deposited in the General Fund of the state and eighty percent (80%) of the proceeds shall be deposited and credited to the budget of the participating law enforcement agency.~~

~~—(b) In the event more than one (1) law enforcement agency participates in the underlying criminal case out of which the forfeiture arises, eighty percent (80%) of the proceeds shall be deposited and credited to the budget of the law enforcement agency whose officers initiated the criminal case and twenty percent (20%) shall be divided equitably between or among the other participating law enforcement agencies, and shall be deposited and credited to the budgets of the participating law enforcement agencies. In the event that the other participating law enforcement agencies cannot agree on the division of their twenty percent (20%), a petition shall be filed by any one of them in the court in which the civil forfeiture case is brought and the court shall make~~

~~an equitable division.~~

~~If the criminal case is initiated by an officer of the Bureau of Narcotics and more than one (1) law enforcement agency participates in the underlying criminal case out of which the forfeiture arises, the proceeds shall be divided equitably between or among the Bureau of Narcotics and other participating law enforcement agencies and shall be deposited and credited to the budgets of the participating law enforcement agencies. In the event that the Bureau of Narcotics and the other participating law enforcement agencies cannot agree on an equitable division of the proceeds, a petition shall be filed by any one of them in the court in which the civil forfeiture case is brought and the court shall make an equitable division.~~

(3) All money which is forfeited under this article, except as otherwise provided by Section 41-29-185, shall be ~~divided~~, deposited and credited ~~in the same manner as set forth in subsection (2) of this section.~~ to the General Fund of the State of Mississippi.

~~(4) All property forfeited, deposited and credited to the Mississippi Bureau of Narcotics under this article shall be forwarded to the State Treasurer and deposited in a special fund for use by the Mississippi Bureau of Narcotics upon appropriation by the Legislature.~~

~~(4) (5) All real estate which is forfeited under the provisions of this article shall be sold to the highest and best bidder at a public auction for cash, such auction to be conducted by the chief law enforcement officer of the initiating law enforcement agency, or his designee, at such place, on such notice and in accordance with the same procedure, as far as practicable, as is required in the case of sales of land under execution at law. The proceeds of such sale shall first be applied to the cost and expense in administering and conducting such sale, then to the satisfaction of all mortgages, deeds of trust, liens and encumbrances of record on such property. The remaining proceeds shall be divided~~, forwarded and deposited ~~in the same manner set out in subsection (2) of this section.~~ General Fund of the State of Mississippi.

~~(5) (6) All other property that has been forfeited shall, except as otherwise provided, be sold at a public auction for cash by the chief law enforcement officer of the initiating law enforcement agency, or his designee, to the highest and best bidder after advertising the sale for at least once each week for three (3) consecutive weeks, the last notice to appear not more than ten (10) days nor less than five (5) days prior to such sale, in a newspaper having a general circulation in the jurisdiction in which said law enforcement agency is located. Such notices shall contain a description of the property to be sold and a statement of the time and place of sale. It shall not be necessary to the validity of such sale either to have the property present at the place of sale or to have the name of the owner thereof stated in such notice. The proceeds of the sale shall be disposed of as follows:~~

(a) To any bona fide lienholder, secured party or other party holding an interest in the property in the nature of a security interest, to the extent of his interest; and

(b) The balance, if any, remaining after deduction of all storage, court costs and expenses of liquidation shall be ~~divided~~, forwarded and deposited ~~in the same manner set out in subsection (2) of this section.~~ General Fund of the State of Mississippi.

~~(7) (a) Any county or municipal law enforcement agency may maintain, repair, use and operate for official purposes all property, other than real property, money or such property that is described in subsection (1) of this section, that has been forfeited to the agency if it is free from any interest of a bona fide lienholder, secured party or other party who holds an interest in the property in the nature of a security interest. Such county or municipal law enforcement agency may purchase the interest of a bona fide lienholder, secured party or other party who holds an interest so that the property can be released for its use. If the property is a motor vehicle susceptible of titling under the Mississippi Motor Vehicle Title Law, the law enforcement agency shall be deemed to be the purchaser, and the certificate of title shall be issued to it as required by subsection (9) of this section.~~

~~—(b) (i) If a vehicle is forfeited to or transferred to a sheriff's department, then the sheriff may transfer the vehicle to the county for official or governmental use as the board of supervisors may direct.~~

~~—(ii) If a vehicle is forfeited to or transferred to a police department, then the police chief may transfer the vehicle to the municipality for official or governmental use as the governing authority of the municipality may direct.~~

~~—(c) If a motor vehicle forfeited to a county or municipal law enforcement agency becomes obsolete or is no longer needed for official or governmental purposes, it may be disposed of in accordance with Section 19-7-5 or in the manner provided by law for disposing of municipal property.~~

~~(8) The Mississippi Bureau of Narcotics may maintain, repair, use and operate for official purposes all property, other than real property, money or such property as is described in subsection (1) of this section, that has been forfeited to the bureau if it is free from any interest of a bona fide lienholder, secured party, or other party who holds an interest in the property in the nature of a security interest. In such case, the bureau may purchase the interest of a bona fide lienholder, secured party or other party who holds an interest so that such property can be released for use by the bureau.~~

~~The bureau may maintain, repair, use and operate such property with money appropriated to the bureau for current operations. If the property is a motor vehicle susceptible of titling under the Mississippi Motor Vehicle Title Law, the bureau is deemed to be the purchaser and the certificate of title shall be issued to it as required by subsection (9) of this section.~~

~~(9) The Department of Revenue shall issue a certificate of title to any person who purchases property under the provisions of this section when a certificate of title is required under the laws of this state.~~

(6) All funds deposited in State General Fund shall be transferred to the Criminal Justice Enhancement Fund. All distributions from the fund shall be made by the Legislature on recommendation of the fund oversight committee which shall consist of the director of Mississippi Bureau of Narcotics, President of Mississippi Sheriff's Association; Executive

Director of the Mississippi Police Chief's Association; President of the Mississippi Prosecutor's Association; the Attorney General; the President of the Mississippi Supervisor's Association and the State Public Defender. The committee shall review and recommend for approval funding of projects to enhance criminal justice. No less than eighty percent (80%) of funds shall go to local and/or state law enforcement agencies. No more than twenty percent (20%) shall be divided evenly between prosecution and defense services.

TITLE 41. PUBLIC HEALTH  
CHAPTER 29. POISONS, DRUGS AND OTHER CONTROLLED SUBSTANCES  
ARTICLE 3. UNIFORM CONTROLLED SUBSTANCES LAW

Miss. Code Ann. § 41-29-185 (2016)

§ 41-29-185. Disposition of forfeited property transferred pursuant to federal property sharing provisions

One hundred percent (100%) of any seized and forfeited property to be transferred to any state or local law enforcement agency under the provisions of 21 USCS Section 881(e)(1), 19 USCS Section 1616(a)(2), or other federal property sharing provisions, shall be credited to the budget of the state or local agency that directly participated in the seizure or forfeiture, for the specific purpose of increasing law enforcement resources for that specific state or local agency. Such transferred property must be used to augment existing state and local law enforcement budgets and not to supplant them.

TITLE 97. CRIMES  
CHAPTER 3. CRIMES AGAINST THE PERSON

Miss. Code Ann. § 97-3-54.7 (2016)

§ 97-3-54.7. Human Trafficking Act; forfeiture of assets and disposition of proceeds.

(1) In addition to any other civil or criminal penalties provided by law, any property used in the commission of a violation of this act shall be forfeited as provided herein.

(a) The following property shall be subject to forfeiture if used or intended for use as an instrumentality in or used in furtherance of a violation of this act:

- (i) Conveyances, including aircraft, vehicles or vessels;
- (ii) Books, records, telecommunication equipment, or computers;
- (iii) Money ~~or weapons~~;

(iv) Everything of value furnished, or intended to be furnished, in exchange for an act in violation and all proceeds traceable to the exchange;

(v) Negotiable instruments and securities;

(vi) Any property, real or personal, directly or indirectly acquired or received in a violation or as an inducement to violate;

(vii) Any property traceable to proceeds from a violation; and

(viii) Any real property, including any right, title and interest in the whole of or any part of any lot or tract of land used in furtherance of a violation of this act.

(b) (i) No property used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the property is a consenting party or privy to a violation of this act;

(ii) No property is subject to forfeiture under this section by reason of any act or omission proved by the owner thereof to have been committed or omitted without his knowledge or consent; if the confiscating authority has reason to believe that the property is a leased or rented property, then the confiscating authority shall notify the owner of the property within five (5) days of the confiscation or within five (5) days of forming reason to believe that the property is a leased or rented property;

(iii) Forfeiture of a property encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to the act or omission.

(2) No property shall be forfeited under the provisions of this section, to the extent of the interest of an owner, by reason of any act or omission established by him to have been committed or omitted without his knowledge or consent.

(3) Seizure without process may be made if the seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant.

(4) (a) When any property is seized under this section, proceedings shall be instituted within a reasonable period of time from the date of seizure or the subject property shall be immediately returned to the party from whom seized.

(b) A petition for forfeiture shall be filed by the Attorney General or a district attorney in the name of the State of Mississippi, ~~the county, or the municipality~~, and may be filed in the county in which the seizure is made, the county in which the criminal prosecution is brought, or the county in which the owner of the seized property is found. Forfeiture proceedings may be brought in the circuit court or the county court if a county court exists in the county and the value of the seized property is within the jurisdictional limits of the county court as set forth in Section 9-9-21. A copy of the petition shall be served upon the following persons by service of process in the same manner as in civil cases:

(i) The owner of the property, if address is known;

(ii) Any secured party who has registered his lien or filed a financing statement as provided by law, if the identity of the secured party can be ascertained by the entity filing the petition by making a good faith effort to ascertain the identity of the secured party;

(iii) Any other bona fide lienholder or secured party or other person holding an interest in the property in the nature of a security interest of whom the seizing law enforcement agency has actual knowledge; and

(iv) Any person in possession of property subject to forfeiture at the time that it was seized.

(5) If the property is a motor vehicle susceptible of titling under the Mississippi Motor Vehicle Title Law and if there is any reasonable cause to believe that the vehicle has been titled, inquiry of the Department of Revenue shall be made as to what the records of the Department of Revenue show as to who is the record owner of the vehicle and who, if anyone, holds any lien or security interest that affects the vehicle.

(6) If the property is a motor vehicle and is not titled in the State of Mississippi, then an attempt shall be made to ascertain the name and address of the person in whose name the vehicle is licensed, and if the vehicle is licensed in a state which has in effect a certificate of title law, inquiry of the appropriate agency of that state shall be made as to what the records of the agency show as to who is the record owner of the vehicle and who, if anyone, holds any lien, security interest or other instrument in the nature of a security device that affects the vehicle.

(7) If the property is of a nature that a financing statement is required by the laws of this state to be filed to perfect a security interest affecting the property and if there is any reasonable cause to believe that a financing statement covering the security interest has been filed under the laws of this state, inquiry of the appropriate office designated in Section 75-9-501, shall be made as to what the records show as to who is the record owner of the property and who, if anyone, has filed a financing statement affecting the property.

(8) If the property is an aircraft or part thereof and if there is any reasonable cause to believe that an instrument in the nature of a security device affects the property, inquiry of the Mississippi Department of Transportation shall be made as to what the records of the Federal Aviation Administration show as to who is the record owner of the property and who, if anyone, holds an instrument in the nature of a security device which affects the property.

(9) If the answer to an inquiry states that the record owner of the property is any person other than the person who was in possession of it when it was seized, or states that any person holds any lien, encumbrance, security interest, other interest in the nature of a security interest, mortgage or deed of trust that affects the property, the record owner and also any lienholder, secured party, other person who holds an interest in the property in the nature of a security interest, or holder of an encumbrance, mortgage or deed of trust that affects the property is to be named in the petition of forfeiture and is to be served with process in the same manner as in civil cases.

(10) If the owner of the property cannot be found and served with a copy of the petition of

forfeiture, or if no person was in possession of the property subject to forfeiture at the time that it was seized and the owner of the property is unknown, there shall be filed with the clerk of the court in which the proceeding is pending an affidavit to such effect, whereupon the clerk of the court shall publish notice of the hearing addressed to "the Unknown Owner of \_\_\_\_\_," filling in the blank space with a reasonably detailed description of the property subject to forfeiture. Service by publication shall contain the other requisites prescribed in Section 11-33-41, and shall be served as provided in Section 11-33-37, for publication of notice for attachments at law.

(11) No proceedings instituted pursuant to the provisions of this section shall proceed to hearing unless the judge conducting the hearing is satisfied that this section has been complied with. Any answer received from an inquiry required by this section shall be introduced into evidence at the hearing.

(12) (a) An owner of a property that has been seized shall file an answer within thirty (30) days after the completion of service of process. If an answer is not filed, the court shall hear evidence that the property is subject to forfeiture and forfeit the property to the seizing law enforcement agency. If an answer is filed, a time for hearing on forfeiture shall be set within thirty (30) days of filing the answer or at the succeeding term of court if court would not be in session within thirty (30) days after filing the answer. The court may postpone the forfeiture hearing to a date past the time any criminal action is pending against the owner upon request of any party.

(b) If the owner of the property has filed an answer denying that the property is subject to forfeiture, then the burden is on the petitioner to prove that the property is subject to forfeiture. However, if an answer has not been filed by the owner of the property, the petition for forfeiture may be introduced into evidence and is prima facie evidence that the property is subject to forfeiture. The burden of proof placed upon the petitioner in regard to property forfeited under the provisions of this chapter shall be by a preponderance of the evidence.

(c) At the hearing any claimant of any right, title or interest in the property may prove his lien, encumbrance, security interest, other interest in the nature of a security interest, mortgage or deed of trust to be bona fide and created without knowledge or consent that the property was to be used so as to cause the property to be subject to forfeiture.

(d) If it is found that the property is subject to forfeiture, then the judge shall forfeit the property. However, if proof at the hearing discloses that the interest of any bona fide lienholder, secured party, other person holding an interest in the property in the nature of a security interest, or any holder of a bona fide encumbrance, mortgage or deed of trust is greater than or equal to the present value of the property, the court shall order the property released to him. If the interest is less than the present value of the property and if the proof shows that the property is subject to forfeiture, the court shall order the property forfeited.

(13) Unless otherwise provided herein, all personal property which is forfeited under this section shall be liquidated and, after deduction of court costs and the expense of liquidation, the proceeds shall be ~~divided as follows:~~ deposited in the State General Fund.

~~(a) If only one (1) law enforcement agency participates in the underlying criminal case out of~~

~~which the forfeiture arises, fifty percent (50%) of the proceeds shall be forwarded to the State Treasurer and deposited in the Relief for Victims of Human Trafficking Fund, and fifty percent (50%) shall be deposited and credited to the budget of the participating law enforcement agency.~~

~~—(b) If more than one (1) law enforcement agency participates in the underlying criminal case out of which the forfeiture arises, fifty percent (50%) of the proceeds shall be forwarded to the State Treasurer and deposited in the Relief for Victims of Human Trafficking Fund, twenty five percent (25%) of the proceeds shall be deposited and credited to the budget of the law enforcement agency whose officers initiated the criminal case and twenty five percent (25%) shall be divided equitably between or among the other participating law enforcement agencies, and shall be deposited and credited to the budgets of the participating law enforcement agencies. In the event that the other participating law enforcement agencies cannot agree on the division of their twenty five percent (25%), a petition shall be filed by any one of them in the court in which the civil forfeiture case is brought and the court shall make an equitable division.~~

~~(14) All money forfeited under this section shall be divided, deposited and credited in the State General Fund same manner as provided in subsection (13).~~

~~(15) All real estate forfeited under the provisions of this section shall be sold to the highest and best bidder at a public auction for cash, the auction to be conducted by the chief law enforcement officer of the initiating law enforcement agency, or his designee, at such place, on such notice and in accordance with the same procedure, as far as practicable, as is required in the case of sales of land under execution at law. The proceeds of the sale shall first be applied to the cost and expense in administering and conducting the sale, then to the satisfaction of all mortgages, deeds of trust, liens and encumbrances of record on the property. The remaining proceeds shall be divided, forwarded and deposited in the State General Fund same manner as provided in subsection (13).~~

~~(16) (a) Any county or municipal law enforcement agency may maintain, repair, use and operate for official purposes all property described in subsection (1)(a)(i) of this section that has been forfeited to the agency if it is free from any interest of a bona fide lienholder, secured party or other party who holds an interest in the property in the nature of a security interest. The county or municipal law enforcement agency may purchase the interest of a bona fide lienholder, secured party or other party who holds an interest so that the property can be released for its use. If the property is a motor vehicle susceptible of titling under the Mississippi Motor Vehicle Title Law, the law enforcement agency shall be deemed to be the purchaser, and the certificate of title shall be issued to it as required by subsection (9) of this section.~~

~~—(b) (i) If a vehicle is forfeited to or transferred to a sheriff's department, then the sheriff may transfer the vehicle to the county for official or governmental use as the board of supervisors may direct.~~

~~—(ii) If a vehicle is forfeited to or transferred to a police department, then the police chief may transfer the vehicle to the municipality for official or governmental use as the governing authority of the municipality may direct.~~

~~—(c) If a motor vehicle forfeited to a county or municipal law enforcement agency becomes obsolete or is no longer needed for official or governmental purposes, it may be disposed of in accordance with Section 19-7-5 or in the manner provided by law for disposing of municipal property.~~

~~(17) The forfeiture procedure set forth in this section is the sole remedy of any claimant, and no court shall have jurisdiction to interfere therewith by replevin, injunction, supersedeas or in any other manner.~~

TITLE 45. PUBLIC SAFETY AND GOOD ORDER  
CHAPTER 9. WEAPONS  
DOCKET OF DEADLY WEAPONS SEIZED

Miss. Code Ann. § 45-9-151 (2016)

§ 45-9-151. Docket of deadly weapons seized

(1) Every law enforcement agency of the state or of any political subdivision thereof shall maintain a docket which shall contain a record of all deadly weapons that are seized by employees of such law enforcement agency. Such docket shall include the name of the arresting officer, the date of the arrest, the charge upon which the seizure was based, the name of the person from whom such deadly weapon was seized, the physical description of the deadly weapon, the serial number, if any, of the deadly weapon, and the chain of custody of the deadly weapon.

(2) Every deadly weapon seized by any law enforcement officer shall be entered into the docket required to be maintained pursuant to subsection (1) of this section within ten (10) days after the occurrence of such seizure.

(3) If the court orders any seized deadly weapon to be forfeited and disposed of by sale, the proceeds of such sale shall be deposited into the general fund of the State of Mississippi governmental entity of which such law enforcement agency is a part and shall be budgeted to such law enforcement agency. ~~The provisions of this subsection shall not apply to deadly weapons that are subject to forfeiture pursuant to Section 41-29-153, Mississippi Code of 1972.~~

(4) Any law enforcement officer who knowingly fails to cause a seized deadly weapon to be entered into the docket within the time limit specified in subsection (2) of this section shall be guilty of a misdemeanor and, upon conviction thereof, may be fined not more than One Thousand Dollars (\$ 1,000.00). A conviction under the provisions of this section shall not be used as the basis for removal of a person from elective office.

TITLE 97. CRIMES  
CHAPTER 37. WEAPONS AND EXPLOSIVES  
GENERAL PROVISIONS

Miss. Code Ann. § 97-37-3 (2016)

§ 97-37-3. Deadly weapons; forfeiture of weapon; return upon dismissal or acquittal; confiscated firearms may be sold at auction; proceeds of sale used to purchase bulletproof vests for seizing law enforcement agency

(1) Any weapon used in violation of Section 97-37-1, or used in the commission of any other crime, shall be seized by the arresting officer, may be introduced in evidence, and in the event of a conviction, shall be ordered to be forfeited, and shall be disposed of as ordered by the court having jurisdiction of such offense. In the event of dismissal or acquittal of charges, such weapon shall be returned to the accused from whom it was seized.

(2) (a) If the weapon to be forfeited is merchantable, the court may order the weapon forfeited to the seizing law enforcement agency.

(b) A weapon so forfeited to a law enforcement agency ~~may~~ shall be sold at auction as provided by Sections 19-3-85 and 21-39-21 to a federally-licensed firearms dealer, with the proceeds from such sale at auction to be ~~used to buy bulletproof vests for the seizing law enforcement agency.~~ deposited in State General Fund.

TITLE 97. CRIMES  
CHAPTER 44. MISSISSIPPI STREETGANG ACT

Miss. Code Ann. § 97-44-17 (2016)

§ 97-44-17. Forfeiture of firearms, ammunition, and dangerous weapons used by criminal street gangs; disposition of property seized; procedure

(1) Any firearm, ammunition to be used in a firearm, or dangerous weapon in the possession of a member of a criminal street gang may be seized by any law enforcement agency or peace officer when the law enforcement agency or peace officer has probable cause to believe that the firearm, ammunition to be used in a firearm, or dangerous weapon is or has been used by a gang in the commission of illegal activity.

(2) The district attorney or Attorney General ~~an attorney for the seizing agency~~ shall initiate, in a civil action, forfeiture proceedings by petition in the circuit courts as to any property seized pursuant to the provisions of this section within thirty (30) days of seizure. The district attorney or Attorney General shall provide notice of the filing of the petition to those members of the gang who become known to law enforcement officials as a result of the seizure and any related arrests, and to any person determined by law enforcement officials to be the owner of any of the property involved. After initial notice of the filing of the petition, the court shall assure that all persons so notified continue to receive notice of all subsequent proceedings related to the property.

(3) Any person who claims an interest in any seized property shall, in order to assert a claim that

the property should not be forfeited, file a notice with the court, without necessity of paying costs, of the intent to establish either of the following:

(a) That the persons asserting the claim did not know of, could not have known of, or had no reason to believe in its use by a gang in the commission of illegal activity; or

(b) That the law enforcement officer lacked the requisite reasonable belief that the property was or had been used by a gang in the commission of illegal activity.

(4) An acquittal or dismissal in a criminal proceeding shall not preclude civil proceedings under this section; however, for good cause shown, on motion by the district attorney, the court may stay civil forfeiture proceedings during the criminal trial for related criminal indictment or information alleging a violation of this section. Such a stay shall not be available pending an appeal.

(5) Except as otherwise provided by this section, all proceedings hereunder shall be governed by the provisions of the Mississippi Rules of Civil Procedure.

(6) The issue shall be determined by the court alone, and the hearing on the claim shall be held within sixty (60) days after service of the petition unless continued for good cause. The district attorney shall have the burden of showing by clear and convincing proof that forfeiture of the property is appropriate.

(7) Any person who asserts a successful claim in accordance with subsection (3) of this section shall be awarded the seized property by the court, together with costs of filing such action. All property as to which no claim is filed, or as to which no successful claim is made, may be destroyed, sold at a public sale, ~~retained for use by the seizing agency or transferred without charge to any law enforcement agency of the state for use by it.~~ Property that is sold shall be sold by the circuit court at a public auction for cash to the highest and best bidder after advertising the sale for at least once each week for three (3) consecutive weeks, the last notice to appear not more than ten (10) days nor less than five (5) days prior to such sale in a newspaper having a general circulation in the county. Such notice shall contain a description of the property to be sold and a statement of the time and place of sale. It shall not be necessary to the validity of such sale either to have the property present at the place of sale or to have the name of the owner thereof stated in such notice. The proceeds of the sale, less any expenses of concluding the sale, shall be deposited in the ~~seizing agency's general fund of the State to be used only for approved law enforcement activity affecting the agency's efforts to combat gang activities.~~

(8) Any action under the provisions of this section may be consolidated with any other action or proceedings pursuant to this section relating to the same property on motion of the district attorney.

TITLE 49. CONSERVATION AND ECOLOGY  
CHAPTER 15. SEAFOOD  
ARTICLE 4. PROCEDURES FOR FORFEITURE OF PROPERTY SEIZED IN MARINE  
VIOLATIONS

Miss. Code Ann. § 49-15-201 (2016)

§ 49-15-201. Institution of forfeiture proceedings; petition for forfeiture; inquiry into ownership, lien, or other security interest in seized motor vehicle, aircraft, or other personal property subject to forfeiture; notice of forfeiture hearing to any person holding interest in seized property

(1) ~~Except as otherwise provided in Section 49-15-207~~, when any property is seized pursuant to Section 49-15-21 or 59-21-33, Mississippi Code of 1972, proceedings under this section shall be instituted promptly. The seizing law enforcement agency may, in the sound exercise of discretion, decide not to bring a forfeiture action if the interests of bona fide lien holders or secured creditors equal or exceed the value of the seized property, or if other factors would produce a negative economic result. No property shall be subject to forfeiture which has been stolen from its owner if the owner can be identified and prosecution for the theft has been initiated.

(2) A petition for forfeiture shall be filed promptly in the name of the State of Mississippi, by the Attorney General ~~the county or the municipality~~ and may be filed in the county in which the seizure is made, the county in which the criminal prosecution is brought or the county in which the owner of the seized property is found. Forfeiture proceedings may be brought in the circuit court or the county court if a county court exists in the county and the value of the seized property is within the jurisdictional limits of the county court as set forth in Section 9-9-21, Mississippi Code of 1972. A copy of such petition shall be served upon the following persons by service of process in the same manner as in civil cases:

(a) The owner of the property, if address is known;

(b) Any secured party who has registered his lien or filed a financing statement as provided by law, if the identity of such secured party can be ascertained by the Department of Marine Resources or the local law enforcement agency by making a good faith effort to ascertain the identity of such secured party as described in subsections (3), (4), (5), (6) and (7) of this section;

(c) Any other bona fide lien holder or secured party or other person holding an interest in the property in the nature of a security interest of whom the Department of Marine Resources or the local law enforcement agency has actual knowledge; and

(d) Any person in possession of property subject to forfeiture at the time that it was seized.

(3) If the property is a motor vehicle susceptible of titling under the Mississippi Motor Vehicle Title Law and if there is any reasonable cause to believe that the vehicle has been titled, the Department of Marine Resources or the local law enforcement agency shall make inquiry of the State Tax Commission as to what the records of the State Tax Commission show as to who is the record owner of the vehicle and who, if anyone, holds any lien or security interest which affects the vehicle.

(4) If the property is a motor vehicle and is not titled in the State of Mississippi, then the Department of Marine Resources or the local law enforcement agency shall attempt to ascertain the name and address of the person in whose name the vehicle is licensed, and if the vehicle is licensed in a state which has in effect a certificate of title law, the Department of Marine Resources or the local law enforcement agency shall make inquiry of the appropriate agency of that state as to what the records of the agency show as to who is the record owner of the vehicle and who, if anyone, holds any lien, security interest or other instrument in the nature of a security device which affects the vehicle.

(5) If the property is of a nature that a financing statement is required by the laws of this state to be filed to perfect a security interest affecting the property and if there is any reasonable cause to believe that a financing statement covering the security interest has been filed under the laws of this state, the Department of Marine Resources or the local law enforcement agency shall make inquiry of the appropriate office designated in Section 75-9-501, Mississippi Code of 1972, as to what the records show as to who is the record owner of the property and who, if anyone, has filed a financing statement affecting the property.

(6) If the property is an aircraft or part thereof and if there is any reasonable cause to believe that an instrument in the nature of a security device affects the property, then the Department of Marine Resources or the local law enforcement agency shall make inquiry as to what the records of the Federal Aviation Administration show as to who is the record owner of the property and who, if anyone, holds an instrument in the nature of a security device which affects the property.

(7) In the case of all other personal property subject to forfeiture, if there is any reasonable cause to believe that an instrument in the nature of a security device affects the property, then the Department of Marine Resources or the local law enforcement agency shall make a good faith inquiry to identify the holder of any such instrument.

(8) If the answer to an inquiry states that the record owner of the property is any person other than the person who was in possession of it when it was seized, or states that any person holds any lien, encumbrance, security interest, other interest in the nature of a security interest, mortgage or deed of trust which affects the property, the Department of Marine Resources or the local law enforcement agency shall cause any record owner and also any lien holder, secured party, other person who holds an interest in the property in the nature of a security interest which affects the property to be named in the petition of forfeiture and to be served with process in the same manner as in civil cases.

(9) If the owner of the property cannot be found and served with a copy of the petition of forfeiture, or if no person was in possession of the property subject to forfeiture at the time that it was seized and the owner of the property is unknown, the Department of Marine Resources or the local law enforcement agency shall file with the clerk of the court in which the proceeding is pending an affidavit to such effect, whereupon the clerk of the court shall publish notice of the hearing addressed to "the Unknown Owner of \_\_\_\_\_," filling in the blank space with a reasonably detailed description of the property subject to forfeiture. Service by publication shall contain the other requisites prescribed in Section 11-33-41, Mississippi Code of 1972, and shall be served as provided in Section 11-33-37, Mississippi Code of 1972, for publication of notice

for attachments at law.

(10) No proceedings instituted pursuant to the provisions of this section shall proceed to hearing unless the judge conducting the hearing is satisfied that this section has been complied with. Any answer received from an inquiry required by subsections (3) through (7) of this section shall be introduced into evidence at the hearing.

TITLE 49. CONSERVATION AND ECOLOGY  
CHAPTER 15. SEAFOOD  
ARTICLE 4. PROCEDURES FOR FORFEITURE OF PROPERTY SEIZED IN MARINE  
VIOLATIONS

Miss. Code Ann. § 49-15-203 (2016)

§ 49-15-203. Answer; hearing in contested cases; order of forfeiture; rights of parties holding liens or security interests in property subject to forfeiture

(1) ~~Except as otherwise provided in Section 49-15-207,~~ an owner of property that has been seized pursuant to Section 49-15-21 or 59-21-33, Mississippi Code of 1972, shall file an answer within thirty (30) days after the completion of service of process. If an answer is not filed, the court shall hear evidence that the property is subject to forfeiture and forfeit the property to the State General Fund ~~Department of Marine Resources or the local law enforcement agency~~. If an answer is filed, a time for hearing on forfeiture shall be set within thirty (30) days of filing the answer or at the succeeding term of court, if court would not be in progress within thirty (30) days after filing the answer. Provided, however, that upon request by the Department of Marine Resources, the local law enforcement agency or the owner of the property, the court may postpone said forfeiture hearing to a date past the time any criminal action is pending against said owner.

(2) If the owner of the property has filed an answer denying that the property is subject to forfeiture, then the burden is on the petitioner to prove that the property is subject to forfeiture. However, if an answer has not been filed by the owner of the property, the petition for forfeiture may be introduced into evidence and is prima facie evidence that the property is subject to forfeiture. The standard of proof placed upon the petitioner in regard to property forfeited under the provisions of this article shall be by a preponderance of the evidence.

(3) At the hearing any claimant of any right, title or interest in the property may prove his lien, encumbrance, security interest or other interest in the nature of a security interest to be bona fide and created without knowledge or consent that the property was to be used so as to cause the property to be subject to forfeiture.

(4) If it is found that the property is subject to forfeiture, then the judge shall forfeit the property to the State General Fund ~~Department of Marine Resources or the local law enforcement agency~~. However, if proof at the hearing discloses that the interest of any bona fide lien holder, secured party, other person holding an interest in the property in the nature of a security interest is greater than or equal to the present value of the property, the court shall order the property released to

him. If such interest is less than the present value of the property and if the proof shows that the property is subject to forfeiture, the court shall order the property forfeited to the State General Fund ~~Department of Marine Resources or the local law enforcement agency.~~

TITLE 49. CONSERVATION AND ECOLOGY  
CHAPTER 15. SEAFOOD  
ARTICLE 4. PROCEDURES FOR FORFEITURE OF PROPERTY SEIZED IN MARINE VIOLATIONS

Miss. Code Ann. § 49-15-207 (2016)

~~§ 49-15-207. Administrative forfeiture procedure for property with value not exceeding certain threshold.~~

~~—(1) When any property the value of which does not exceed Five Thousand Dollars (\$5,000.00), is seized pursuant to Section 49-15-21 or 59-21-33, Mississippi Code of 1972, the property may be forfeited by the administrative forfeiture procedures provided for in this section.~~

~~(2) The attorney for the seizing law enforcement agency shall provide notice of intention to forfeit the seized property administratively, by certified mail, return receipt requested, to all persons who are required to be notified pursuant to Section 49-15-201(2).~~

~~(3) If the notice of intention to forfeit the seized property administratively cannot be given as provided in subsection (2) of this section because of refusal, failure to claim, insufficient address or any other reason, the attorney for the seizing law enforcement agency shall provide notice by publication in a newspaper of general circulation in the county in which the seizure occurred for once a week for three (3) consecutive weeks.~~

~~(4) Notice pursuant to subsections (2) and (3) of this section shall include the following information:~~

- ~~—(a) A description of the property;~~
- ~~—(b) The approximate value of the property;~~
- ~~—(c) The date and place of the seizure;~~
- ~~—(d) The connection between the property and the violation of the laws under the jurisdiction of the Department of Marine Resources;~~
- ~~—(e) The instructions for filing a request for judicial review; and~~
- ~~—(f) A statement that the property will be forfeited to the seizing law enforcement agency if a request for judicial review is not timely filed.~~

~~(5) Persons claiming an interest in the seized property may initiate judicial review of the seizure and proposed forfeiture by filing a request for judicial review with the attorney for the seizing law enforcement agency, within thirty (30) days after receipt of the certified letter or within thirty (30) days after the first publication of notice, whichever is applicable.~~

~~(6) If no request for judicial review is timely filed, the attorney for the seizing law enforcement agency shall prepare a written declaration of forfeiture of the subject property and the forfeited property shall be used, distributed or disposed of in accordance with the provisions of Section 49-15-205.~~

~~(7) Upon receipt of a timely request for judicial review, the attorney for the seizing law enforcement agency shall promptly file a petition for forfeiture and proceed as provided in Section 49-15-201.~~

TITLE 67. ALCOHOLIC BEVERAGES  
CHAPTER 1. LOCAL OPTION ALCOHOLIC BEVERAGE CONTROL

Miss. Code Ann. § 67-1-17 (2016)

§ 67-1-17. Unlawful possession of alcoholic beverages; seizure and sale

(1) It shall be unlawful for any person to have or possess either alcoholic beverages or personal property intended for use in violating the provisions of this chapter, or regulations prescribed under this chapter, or Chapter 31 of Title 97, Mississippi Code of 1972. No property rights shall exist in any such personal property or alcoholic beverages. All such personal property and alcoholic beverages shall be considered contraband and shall be seized and forfeited to the state of Mississippi.

(2) The following are subject to forfeiture:

(a) All alcoholic beverages which have been manufactured, distilled, distributed, dispensed or acquired in violation of this chapter or Chapter 31 of Title 97, Mississippi Code of 1972;

(b) All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing or exporting any alcoholic beverage in violation of this chapter or Chapter 31 of Title 97, Mississippi Code of 1972;

(c) All property which is used, or intended for use, as a container for property described in items (a) or (b) of this subsection;

(d) All conveyances, including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt, possession or concealment, of property described in item (a) of this subsection which is in excess of six (6) gallons or of property described in item (b) of this subsection; however,

(i) No conveyance used by any person as a common carrier in the transaction of business as a

common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter or Chapter 31 of Title 97, Mississippi Code of 1972;

(ii) No conveyance is subject to forfeiture under this section by reason of any act or omission proved by the owner thereof to have been committed or omitted without his knowledge or consent; if the confiscating authority has reason to believe that the conveyance is a leased or rented conveyance, then the confiscating authority shall notify the owner of the conveyance within five (5) days of the confiscation; and

(iii) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to the act or omission;

(e) All money, in excess of \$20,000, ~~deadly weapons~~, books, records and research products and materials, including formulas, microfilm, tapes and data which are used, or intended for use, in violation of this chapter or Chapter 31 of Title 97, Mississippi Code of 1972.

(3) Property subject to forfeiture may be seized by the alcoholic beverage control division and its agents, local law enforcement officers, Mississippi Highway Patrol officers and other law enforcement personnel charged by Section 67-1-91, with enforcing the provisions of this chapter upon process issued by any appropriate court having jurisdiction over the property. Seizure without process may be made if:

(a) The Seizure is incident to an arrest or a search under a search warrant or an administrative inspection under Section 67-1-37(k);

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter or Chapter 31 of Article 97, Mississippi Code of 1972; or

(c) The alcoholic beverage control division of the state tax commission and other law enforcement personnel described in this subsection have probable cause to believe that the property was used or is intended to be used in violation of this chapter or Chapter 31 of Article 97, Mississippi Code of 1972.

(4) Any property seized without a judicially issued seizure warrant must be immediately returned to the person from whom it was seized unless a seizure warrant is obtained from a County or Circuit Court Judge within 72 hours of the seizure. The judge shall issue the seizure warrant upon showing of probable cause that a violation of Chapter 31 of Title 97, Mississippi Code of 1972 has either been committed or was actively being committed at the time of the seizure, and that the seized property is either the proceeds of that offense, or in the case of property used to facilitate the offense, that such property is substantially connected to that offense.

A substantial connection is a connection that is more than incidental or fortuitous. A substantial connection may be shown by establishing that the use of the property made the crime less difficult.

~~(5)~~ (4) Alcoholic beverages and raw materials seized or detained under the authority of this chapter or Chapter 31 of Title 97, Mississippi Code of 1972, is deemed to be in the custody of the agent or agency so seizing the property and subject only to the orders and decrees of the court having jurisdiction over the property. When such property is seized it may be retained as evidence until final disposition of the cause in which such property is involved, and then the agent or agency so seizing the property shall physically transfer such alcoholic beverage or raw material to the director of the alcoholic beverage control division of the state tax commission together with an appropriate inventory of the items seized. Alcoholic beverages and raw materials seized or detained under the authority of this section shall be disposed of in accordance with the provisions of Section 67-1-18.

~~(6)~~ (5) Any property other than alcoholic beverages and raw materials seized or detained pursuant to this chapter or Chapter 31 of Title 97, Mississippi Code of 1972, shall be deemed to be in the custody of the agent or agency so seizing the property and subject only to the orders and decrees of the court having jurisdiction over the property. When such property is seized it may be retained as evidence until the final disposition of the cause in which such property is involved. Property seized or detained other than alcoholic beverages or raw materials shall be disposed of in accordance with the provisions of Sections 67-1-93, 67-1-95 and 67-1-97.